

tral. Section 52.9 of the Commission's rules requires that numbering resources be available on an efficient and timely basis, and that number administration not "unduly favor or disfavor any particular telecommunications industry segment." Continued RBOC toll-free number administration unduly favors the RBOCs and disfavors other industry segments, while raising serious questions regarding whether number resources are being made available in an efficient and timely basis.

Through toll-free number administration, SBC and the other RBOCs reap significant financial benefits while imposing costs upon other carriers. Under the SMS/800 tariff RBOCs have realized hundreds of millions of dollars in revenues, and the SMT estimates the "revenue requirement" of these services to exceed \$250 million through the year 2000.⁴¹ Indeed, while the BOCs originally committed to provide SMS/800 service at cost, their 1997 request to include a 15% contribution toward their joint and common costs (in addition to direct costs) further demonstrates how they seek to benefit at the expense of the remainder of the industry.⁴² Additionally, the recent determination by the Commission that the RBOCs overcharged carriers for toll-free database services⁴³ suggests that, despite several investigations by the Commission, the SMS/800 costs and the RBOC rates for database queries are not "just, reasonable and non-discriminatory" under Sections 201(b) and 202(a) of the Act. For MCI alone, the BOCs refunded over \$14 million dollars covering overcharges for the period from 1993 to 1996. Positioning one segment of the industry to impose such huge costs on its competitors, for access to essential

⁴¹ See Note 5 above. The derivation of this revenue requirement, except at extremely high levels of aggregation, has not been publicly examined.

⁴² SMS/800 Tariff, Description and Justification at 3.

⁴³ *800 Database Access Tariffs and the 800 Service Management System Tariff*, CC Docket No. 93-129, Report and Order, 11 FCC Rcd. 15227 (1996).

numbering resources, is neither "equitable" nor does it "facilitate entry" under Section 52.9 of the Rules.

SBC and the other RBOCs gain competitive advantages from toll-free number administration in other ways. For example, the RBOCs have access to competitively sensitive information related to toll-free number utilization and assignment. The RBOCs have previously accessed proprietary information, in direct violation of the SMT tariff, and as AT&T has documented admit that they "regularly obtain access" to proprietary carrier information stored in the SMS/800 database.⁴⁴ Perhaps more importantly in the long-run, as architect of the SMS/800 system the SMT can gatekeep implementation of new toll-free codes, and delay implementation of new codes, thereby requiring conservation measures that limit IXC market share and revenue opportunities. For instance, it is not currently known whether the existing database is capable of handling all new toll-free codes (e.g., 866, etc.) planned for implementation or whether performance will suffer as new codes are implemented. Thus, because the RBOCs, through the SMT, control improvements to and expansion of the SMS, they can easily use that control to delay improvements that may have particular benefits to large RespOrgs, such as MCI or AT&T, or to provide a competitive advantage to RBOC-designed toll-free services.⁴⁵

There is currently no means to assess whether the SMT provides SMS/800 service in a cost effective and timely manner. Neither the costs nor the SMS/800 contract with SWBT have

⁴⁴ See Letter from Lynn Haber, Senior Attorney, AT&T to Mr. Michael Wade, President, DSMI (June 29, 1995)(Attached as Exhibit A). The letter notes that LECs had gained access to propriety information related to AT&T's toll-free numbers, and that the LECs regularly obtain access to this information.

⁴⁵ See Letter from Charron Cox, SMS/800 Services to Ms. Beth Sprague, ATIS (Jan. 8, 1998). This letter advises ATIS that "[t]he SMS/800 Management Team (SMT) has authorized the following features for inclusion in SMS/800 Release 10.1." The letter also notes that while efforts were made to reflect the SNAC priorities for new features, that some features could not be developed. While there may be legitimate reasons for not developing the *(Footnote continued on next page)*

been subject to Commission review or approval. In fact, there is reason to believe that the RBOCs, through the SMT, are shifting costs, padding expenses and engaging in other inappropriate activities. Industry sources have informed MCI that the 1997 SMS/800 tariff included a "hidden profit" of 10%-20%, the effect of which was disguised by refunds and rate reductions. Furthermore, the "SMS/800 Management Team often chooses meeting locations at resort-type locations, such as Hawaii, London (U.K.), Martha's Vineyard (peak season), etc." This information demands a Commission investigation. It suggests a lack of accounting control and safeguards that has been used by the RBOCs, in lieu of Commission oversight, to impose substantial overcharges on IXCs. In a competitive environment where all carriers need access to toll-free numbers—and under the competitive checklist requirements of Section 271 of the Act—the SMT cannot continue to be operated by the RBOCs at least without a full review and accounting for all costs involved in the system.

The Commission's failure to examine toll-free number administration would stand in stark contrast to the Commission's previous actions to ensure fair and impartial number administration. The Commission and NANC have greatly enhanced number administration by selecting an impartial NANPA, transferring CO Code Administration function from the RBOCs and GTE, implementing safeguards to ensure that NECA serves in an impartial manner as the billing and collection agent for the NANPA, and selecting impartial entities to run the LNP NPACs. The Commission and NANC painstakingly assessed the neutrality issues associated with each of these actions. Particularly noteworthy is the action of the Commission and NANC to require

features, the letter and process demonstrates the control the RBOC-controlled SMT has over features and functions for the toll-free database system.

NECA to form a separate governing board to manage NECA's billing and collection duties and implement other safeguards related to its relatively indirect and miniscule number administration effort when compared to the roles that the RBOCs play in administering toll-free numbering resources.

In sum, the SMT and SMS/800, controlled by the RBOCs and SWBT, respectively, are at the heart of toll-free number administration. Their continued control by this one segment of the telecommunications industry cannot be squared with the 1996 Act or the Commission's long-standing number administration policies. Accordingly, the Commission must investigate the costs, structure and operations of the entire toll-free database system, and should (a) examine the ownership, cost and contractual relationships among the RBOCs, SWBT and the toll-free database,⁴⁶ and (b) direct that the SMS/800 and the SMT be transferred, via FCC-supervised competitive bidding, to a neutral third-party unaffiliated with any carrier and not aligned with any segment of the telecommunications industry. Only in this way can the Commission satisfy the requirements of Section 251(e)(1) and ensure the public interest in a robust, competitively growing toll-free services market in the United States.

CONCLUSION

Toll-free services generate huge revenues and have great competitive and public interest significance. The RBOCs must not be permitted to administer number resources associated with these services. Continued RBOC toll-free number administration violates Section 251 of the

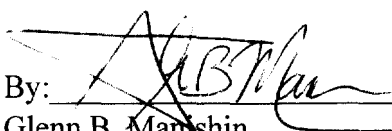
⁴⁶ The Commission should also reconsider the appropriateness of the SMS/800 tariff structure in light of the 1996 Act and the competitive market environment it is designed to bring about. The scope of this review should include evaluating the use of a structure similar to that adopted for local number portability, i.e., establishing a limited liability corporation and negotiated rates, and rate structures, in lieu of interstate tariffs.

1996 Act and is not competitively neutral. The Commission should therefore order that Bellcore either establish that its is not aligned with any industry segment or divest ownership of DSMI to a neutral third-party, order that the SMS/800 and the SMT be transferred, via FCC-supervised competitive bidding, to a neutral third-party that is non-aligned and unaffiliated with any carrier, and promptly investigate the contracts and costs associated with toll-free numbering administration to ensure competitive neutrality and equitable access to these vital numbering resources.

Respectfully submitted,

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Dated: July 1, 1998

EXHIBIT A



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June 29, 1995

Mr. Michael Wade
President
Database Service Management, Inc.
6 Corporate Place
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Re: Access to SMS/800 Database Information

Dear Mr. Wade:

It has come to our attention that on or about June 16, 1995, certain LECs were provided access to AT&T's (among other RespOrgs') proprietary information stored in the SMS/800 database, in connection with the FCC's inquiry into the consumption of 800 numbers by the industry. When AT&T questioned this action, you indicated that the LECs regularly obtain access to this information and that they have claimed entitlement to such access under their tariffs. AT&T demands that this practice immediately cease.

Disclosure of AT&T's (and other RespOrgs') proprietary information to the LECs violates both the nondisclosure provisions of the tariff governing SMS/800 functions¹ and the FCC's mandate that administration of the SMS/800 database be vested in a neutral third party that is not affiliated with the LECs.² In

¹ See Bell Operating Company F.C.C. Tariff No. 1, 800 Service Management System Functions, effective May 1, 1993 ("SMS/800 Tariff"), at Section 2.6.

² See Memorandum Opinion and Order, In the Matter of Provision of Access for 800 Service, CC Docket No. 86-10, adopted and released February 10, 1993 ("SMS/800 Access Order"), at pages 9-10.

addition, disclosure of such information to the FCC without advance notice to AT&T (and other affected RespOrgs) violates the notice requirements of the SMS/800 Tariff.³

The proprietary information at issue includes data reflecting AT&T's and other RespOrgs' utilization rates for 800 numbers, broken out by RespOrg. This information, as well as each RespOrg's customer specific information, is confidential and proprietary to the individual RespOrgs. Its disclosure to LECs, who are themselves RespOrgs and competitors of other RespOrgs in certain markets, is most disturbing because the data reflects, among other things, market share information that is not otherwise publicly available. We know of no legitimate reason for the LECs to obtain this information.

To the contrary, the FCC has recognized the need to shield this data from disclosure to the LECs. In its 1993 SMS/800 Access Order, requiring the tariffing of access to the SMS/800 database, the FCC directed the BOCs to transfer administration of the SMS/800 database from Bellcore to a neutral third party in order to safeguard against potential conflicts of interest between the SMS administrator and RespOrgs that require SMS/800 access.⁴ Since 1993,

³ See SMS/800 Tariff at Section 2.6.1(D)(7), requiring a valid order and advance notice to RespOrgs before disclosure to a governmental body. If AT&T had received such notice in this case, it would not have objected to disclosure of AT&T's proprietary information by DSMT to the FCC, but would have sought assurances that the information would not be disclosed to any other party (including the LECs).

⁴ The tariff requirement was based on the FCC's finding that SMS/800 access is a "monopoly service" that is necessary and "absolutely essential" to the provision of 800 services. The neutral administration requirement was based on the FCC's view that Bellcore should no longer serve as the SMS/800 administrator because its ownership and control by the BOCs, which themselves act as RespOrgs for 800 service subscribers, created an unacceptable risk of discriminatory treatment in the provisioning of SMS access. The FCC concurred with the industry that the BOCs and Bellcore should be divorced from the daily

the BOCs have not performed any of the administrative functions associated with the SMS/800 database.

Moreover, the filed SMS/800 Tariff strictly limits the use and disclosure of RespOrg information that is transmitted to and stored in the SMS/800 database. It prohibits: (1) any RespOrg (including LECs) from accessing data in the SMS/800 database that belongs to another RespOrg; and (2) disclosure of RespOrgs' information, absent the advance written consent of the owner RespOrg, to anyone other than the administrator's employees, affiliates and contractors who are under nondisclosure and who "need to know" for purposes of performing SMS/800 access tasks described in the SMS/800 Tariff. Finally, it requires the SMS/800 administrator to provide advance notice to RespOrgs, and an opportunity to seek a protective order, before disclosure of RespOrg proprietary information to a governmental body.⁵

Please advise us what steps you are taking to assure that the LECs: (i) do not use, copy or disclose any AT&T RespOrg proprietary information they have previously accessed for any purposes whatsoever; (ii) return to the SMS/800 administrator all documents and copies thereof that contain the information described in (i) above; and (iii) are not in the future again provided access to AT&T RespOrg proprietary information without AT&T's advance written consent. Also, please advise what steps you are taking to assure compliance with the requirement that advance notice be provided to AT&T before its proprietary information is disclosed to governmental bodies.

administration of the SMS/800 database. See SMS/800 Access Order at pages 9 - 10.

⁵ See SMS/800 Tariff at Section 2.2.1 (limitations on RespOrgs' access to other RespOrgs' proprietary information); Section 2.6.1 (limitations on use and disclosure of RespOrg proprietary information); and Section 2.6.1(D)(2) (the "need to know" restriction).

CERTIFICATE OF SERVICE
Docket No. 95-155

I, La Shawn M. Barber, do hereby certify on this 1st day of July, 1998, that I have served a copy of the foregoing document via messenger or U.S. First Class Mail, to the parties below:



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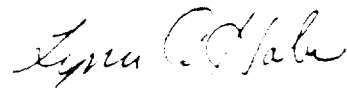
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Thank you for your prompt attention to this matter. If you would like to discuss any of the matters addressed in this letter, please call me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lynn C. Hale".

cc: Kathleen Wallman, Chief, Common Carrier Bureau, FCC